In The

Supreme Court of the United States

October Term, 1979

No. 79-227

MAX SCHULMAN, SALLY SCHULMAN, his wife, and WAMAC, INC., a corporation of the State of New Jersey,

Petitioners,

vs.

PATERSON REDEVELOPMENT AGENCY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT STATE OF NEW JERSEY

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In The

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No.

MAX SCHULMAN, SALLY SCHULMAN, his wife, and WAMAC, INC., a corporation of the State of New Jersey,

Petitioners,

-against-

PATERSON REDEVELOPMENT AGENCY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioners, Max Schulman, Sally Schulman and WAMAC, Inc., submit this petition for writ of certiorari and state as follows:

REPORTS

This is a petition predicated on the New Jersey Supreme Court's modification of the judgment of the Law Division of the New Jersey Superior Court as modified by the Appellate Division.

The decision of the Supreme Court is reported in 78 N.J. 378 (Jan 4, 1979), 396 A.2d 573 (1979). The other decisions were not reported. All three are appended hereto.

JURISDICTIONAL GROUND

This petition seeks review of a decision of the Supreme Court of New Jersey, dated January 4, 1979 and entered on the same date.

A petition for rehearing was filed on January 15, 1979, which was denied on March 13, 1979.

An application for extension of time within which to file a petition for certiorari was granted on May 31, 1979, with the following order:

> "Upon consideration of the application of counsel for petitioner(s),
>
> It is Ordered that the time for filing a petition for writ of certiorari in the above entitled cause be, and the same is hereby, extended to and including *August 10, 1979.*
>
> s/William J. Brennen, Jr.
>
> Associate Justice of the Supreme Court of the United States"

This review is sought on the grounds that a right or privilege granted by a statute of the United States "The Uniform Relocation Assistance Act of 1970", as amended, 42 U.S.C.A. §4601, in particular, Section 4622, and regulations promulgated thereunder, was denied petitioners by the New Jersey Supreme Court.

The decision of the New Jersey Supreme Court construed provisions of the regulations promulgated pursuant to the federal statute on a matter of substance not heretofore decided by this Court. Moreover, as this statute is remedial in nature and applies to many citizens whose property is acquired for public use, the uncertainty and confusion that exists in its implementation should be corrected.

In brief, the trial court (Law Division of the Superior Court) ruled against the applicability of the federal statute and regulations to the subject matter of this action. This was affirmed by the Appellate Division. Because of New Jersey Rule 2:12-11, of the rules governing appellate practice, the applicability of the federal statute and regulations was not presented in petitioners' briefs in the New Jersey Supreme Court. The New Jersey Supreme Court decided, in effect, contrary to the thinking below that the federal statute and regulations were made applicable to the matter in suit by the agreement of petitioners and respondent, and that this was the only standard applicable. Therefore, in order to decide the matter, the New Jersey Supreme Court had to interpret the federal statute and its regulations.

Petitioners argue that in pertinent particulars the New Jersey Supreme Court improperly construed the statute and regulations and thus misperceived the intent of the Congress.

QUESTIONS PRESENTED

The following questions are presented for review herein:

1. Did the New Jersey Supreme Court err in misconstruing and misapplying the federal guideline in respect of claim no. 7, by reducing the lower courts' award from $31,621.41 to $1,400.00?

2. Did the New Jersey Supreme Court err in not applying federal relocation guidelines issued under the Federal Uniform Relocation Assistance Act (42 U.S.C.A. §4622) to some of the claim items to the extent of $50,100.00,which were compensable thereunder, despite the fact that the federal guidelines were held applicable by the court?

3. Did the New Jersey Supreme Court err in not granting counsel fees in the judgment?

4. Did the New Jersey Supreme Court err in modifying the lower courts' award in refusing to grant any interest on the judgment?

STATUTES INVOLVED

The following federal statute and federal guidelines are involved in the case; their pertinent text shall be separately set forth:

1. 42 U.S.C.A. §4622 (Pub. Law 91-646, Title II, Sec. 202, 84 Stat. 1895).

2. 1971 Federal Regulations, Relocation Handbook — 1371.1 Chg. 1, Chapter 6 — Section 5, paragraphs 76 and 81.

3. 1975 Federal Regulations, Relocation Handbook — 1371.1 Rev., Chapter 6 — Section 2, paragraph 6-14:h.

STATEMENT OF FACTS

The main issue in this case involves the extent to which petitioners are entitled to reimbursement for relocation expenses incurred as a consequence of the condemnation of their business property.

On May 20, 1974, the Paterson Redevelopment Agency (Agency) filed a verified complaint in condemnation in order to gain possession of 101-103 and 105-107 River Street in Paterson, alleging, *inter alia*, that the project was federally funded.[1] The federal relocation handbook was presented to the petitioners as a guide to their relocation rights.[1]

The buildings were owned by Max and Sally Schulman and consisted of a one-story office building (105-107) and a four-story warehouse (101-103). Due to the Agency's immediate need for the office building, petitioners were permitted to move goods and merchandise into the warehouse at 101-103. Petitioners continued to operate their business at this time, using the River Street warehouse and a public warehouse located in Totowa.

Subsequently, on July 8, 1974, the Agency and petitioners entered into a consent order signed by Superior Court Judge Edward F. Johnson. That order provided, in relevant part, that:

> "(c) The cost of moving the goods, chattels, and merchandise of the defendant, Wamac Inc., from 105-107 River Street to 101-103 River Street shall be paid for by the (Agency) who shall also pay the costs of moving the goods, chattels and merchandise from the first floor of 101-103 River Street to a public bonded warehouse.
>
> (d) The Paterson Redevelopment Agency shall pay the storage charge for the goods, chattels and merchandise of the defendant in said public bonded warehouse for a period not to exceed December 31, 1974.
>
> (e) The defendants shall be permitted to remain in the four story building at 101-103 River Street, Paterson, New Jersey, until December 31, 1974,

1. In fact, there were no federal funds involved. The complaint was never amended in this regard.

> but shall have the right to vacate said premises sooner. The cost of moving the goods, chattels and merchandise from the building at 101-103 River Street and from the public bonded warehouse where the defendant stored its goods, chattels and merchandise and the relocation expenses of the defendants shall be paid and billed to the Paterson Redevelopment Agency."

The Agency supplemented this agreement by a letter in which it was provided, among other things, that:

> "(The Agency) will provide reimbursement for all reasonable and necessary in-and-out handling charges associated with and related to the merchandise to be stored."

On December 20, 1974, the condemnation commissioners awarded petitioners $103,535.00 for the River Street property. Petitioners appealed this award to the Superior Court. Before trial, however, the parties agreed to accept the commissioners' report as to the value of the land and buildings without prejudice to petitioners' right to seek compensation for relocation expenses.

When the parties failed to reach agreement as to relocation expenses, the matter proceeded to trial. The Agency objected to the trial being conducted on grounds of failure to exhaust administrative remedies. The court rejected this contention on several grounds:

> 1. The action was to compel performance of a court order between the parties;
>
> 2. the interest of justice; and

> 3. *Borough of Clementon v. Meyers,* 115 N.J. Super. 467 (App. Div. 1971), was broad enough to sanction the instant procedure.

A trial was then held to determine the compensability of 24 moving expense items claimed by petitioners.

At the end of the six-day trial, the court found that petitioners were entitled to a reimbursement of $105,136.12, of which the Agency had already paid $25,218.25. It approved many of the 24 listed items and modified or rejected others. (The claim is set forth in the trial court decision, Appendix J.) Judgment for the amount still owing $79,917.87, was entered on October 21, 1976. Included in the judgment was interest of 8% per annum running from the date of the taking.

The Appellate Division, in an unpublished *per curiam* opinion dated December 14, 1977, affirmed except as to the payment of interest. This item was held to accrue not from the date of the taking but rather from the date that a particular expense was actually incurred.

The New Jersey Supreme Court granted the Agency's petition for certification, heard and deliberated on the case in the manner of a court of first impression in that it made new findings of fact, *e.g.*, claim no. 7 (*see* Argument, Point I), and modified the lower court's decision. Petitioners' motion for a rehearing was thereafter denied.

HOW THE FEDERAL QUESTION WAS RAISED

When this case was first heard in the Law Division of the Superior Court, petitioners argued that because the Federal Relocation handbook given to relocatees in federally funded projects was given to petitioners and because the verified complaint herein alleged that this was a federal project, the federal guidelines should be among the standards to apply in

order to determine compensability. Probably the most important fact is that the parties actually believe that the federal guidelines were to apply.

The trial court rejected the applicability of the federal guidelines entirely.

The Appellate Division affirmed on this point.

The Agency then petitioned for certification to the New Jersey Supreme Court. Petitioners herein did not cross-petition, having been the successful party below.

Certification was granted but petitioners, pursuant to Rule 2:12-11 of the New Jersey rules governing appellate practice, could not argue the applicability of the federal guidelines since they had not filed a cross-petition.

In a sense, completely opposite from the two courts below, the New Jersey Supreme Court found that the rights and liabilities stemmed from the agreement between the parties interpreted in the light of the federal guidelines.

Thereupon petitioners moved for a rehearing, arguing that the Supreme Court had sat as a court of first impression in its treatment of the question of applicability of federal guidelines and its new fact findings insofar as Item 7 of the claim was concerned, and that Rule 2:12-11 unfairly deprived petitioners of the opportunity to be heard in the New Jersey Supreme Court on the question of applicability of federal guidelines. This motion was denied.

Thus, the federal questions were raised at the trial, in the Appellate Division as part of the cross-appeal, in the Supreme Court as far as Item 7 was concerned and on motion for rehearing in the Supreme Court.

REASONS FOR GRANTING A WRIT

I.

The New Jersey Supreme Court made an erroneous application of the federal guideline with respect to claim Item 7.

The pertinent federal guideline provides as follows:

> "76. RELETTERING AND PRINTING. Expenditures for relettering trucks, signs, and similar items used by a displaced business concern in the operation of its business, and the amount paid (less salvage value, where appropriate) for printing a reasonable supply of printed matter to replace that made obsolete as a result of the move may be compensable as a moving expense. The duplication of a tenant's sign painted on a door or window may also be compensable as a moving expense. *If a business elects to overprint or overstamp stationery* or other printed matter, expenditures for a reasonable supply thereof may be compensable as a moving expense reimbursement through a relocation payment. No payment for property loss may be made on the items for which a relocation payment for moving expenses has been made." 1971 Federal Regulations, Relocation Handbook 1371.1 Chg. 1, Chapter 6, Section 5, paragraph 76. (emphasis added).

The Law Division of the Superior Court granted petitioners' claim for stationery and display cards (Item 7) in the sum of $31,621.41 as reasonable, and the Appellate Division affirmed. Yet, the New Jersey Supreme Court concluded, without any evidence indicating the lack of reasonableness,

probably on an *a priori* belief, that the petitioners "have failed to show that the amount of stationery printed was reasonable or that overprinting was not feasible." (Appendix A, 11a).

The court thereby made two errors: first, it totally misread the applicable federal guideline and cast a wrong burden upon petitioners to establish that overprinting was not feasible, indicating thereby that unless petitioners could prove that overprinting was not feasible, they would not be entitled to the cost of new stationery. In fact, the above-quoted guideline is just the contrary. It vests the choice of election with the petitioners whether or not to have an overprinted or overstamped stationery. The Agency has no option in that regard. If petitioners elected to have new, and not overprinted stationery, it was certainly their permissible choice and the Agency must pay.

Second, as regards to the reasonableness of the cost of new stationery, there was absolutely no evidence to suggest, let alone establish, that the cost was not reasonable. When the cost was found to be reasonable by the trial court and the Appellate Division, there was no justification for the New Jersey Supreme Court to have held it otherwise. The modification by the Supreme Court appears to be contra to federal guidelines. The uncontradicted testimony at the trial was that the petitioners' customers (national department stores, etc.) would not accept overprinted merchandise.

Furthermore, the Agency had verified the amount and value of the original inventory.

Under these circumstances, would not a reasonable businessman expect to have the old item with the old address replaced by new stationery?

Thus, the New Jersey Supreme Court slipped into impermissible errors, error in law and error in fact, when it

reduced the sum of $31,621.41 to a trickle of $1,400.00 (Appendix A, 11a) in respect to Item 7 of the claim.

II.

The New Jersey Supreme Court erred in not applying federal guidelines to additional claim items.

In addition to an obvious misconstruction of the federal guidelines, the court failed to rule on the compensability of certain other items (Item 14 — for roof repair, Item 15 — repair of the loading dock and grade) pertaining to structural change at the new plant. These items are compensable under paragraph 81 Chapter 6, Section 5 of the 1971 Federal Regulations, Relocation Handbook.

The Law Division of the Superior Court and the Appellate Division had declined to grant these items. However, that basis for denial no longer remains viable in the light of the Supreme Court's rule on the applicability of the federal guidelines. Petitioners specifically raised this point in their petition for a rehearing (Appendix B), but the court denied it without assigning any reason for its denial (Appendix C). We submit that the court's failure to indicate the compensability of such items constitutes error.

After it was held that the federal guidelines were applicable, and the New Jersey Supreme Court, in fact, ruled as to the compensability of some items, justice and fairness demanded that the court should as well have ruled upon all the other items, which were compensable under the federal guidelines.

This specifically pertains to claim Item 14 in the amount of $23,100.00 for roof repair, and claim Item 15 in the amount of $27,000.00 for repair of the loading dock and grade at the new location. The testimony established that both these items were

necessary for the protection of merchandise to be stored within the new plant and efficiently to load and unload such merchandise properly.

The pertinent federal guideline states, as follows:

> "81. PHYSICAL CHANGES AT NEW LOCATION.
>
> a. Policy. The cost of making physical changes in or to a building to which a business concern relocates may be eligible as a moving expense under the following provisions and limitations:
>
> * * *
>
> (3) Changes in or to a building or structure may not increase the value of the building or structure for general purpose uses, may not increase the structural or mechanical capacity of the building or of its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute, nor include building or structural alterations required by local building codes and ordinances, *except* if required for the installation of specific types of equipment moved from the old location or *necessary for the continuation of the business.* No relocation payment in connection with a change in or to a building or structure shall be made for any items for which compensation was made as an acquisition cost at the old location." 1971 Federal Regulations, Relocation Handbook 1371.1 Chg. 1, Chapter 6, Section 5, paragraph 81(a)(3). (emphasis added).

In view of the evidence that the structural changes at the new plant were necessary for the proper and efficient continuation of the business, the underlined exception to the limiting provision of subparagraph 3 did not apply. As a result the cost of such physical changes became eligible as a moving expense under the basic policy of the above guideline and should have been awarded by the New Jersey Supreme Court.

III.

The New Jersey Supreme Court erred in not granting counsel fees in the judgment.

The applicable federal regulation, 6-14:h, enacted February 20, 1975, effective March 31, 1975, provides for the payment of legal fees as an eligible moving expenditure.

> "6-14. MOVING EXPENSES — ELIGIBLE EXPENDITURES.
>
> A relocation payment for actual reasonable moving expenses may include the cost of:
>
> * * *
>
> h. Any professional services necessary to the planning, preparation for, or accomplishment of the move of tangible personal property to the new location or to enable reestablishment at the new location, including, but not limited to, fees or charges for the services of architects, attorneys, engineers, or consultants." 1975 Federal Regulations, Relocation Handbook 1371.1 Rev. Chapter 6, Section 2, paragraph 6-14:h.

While setting forth this provision as one of the bases for granting payment of counsel fees, petitioners are aware of the time bracket with respect to the move.

However, the 1975 Regulations pertaining to the need of "displacment" after March 31, 1975 as a prerequisite. Since the litigation occurred after the effective date were not the petitioners still in a "state of being displaced" until activities connected with the move were terminated.

An affidavit of service is attached hereto as Appendix E, which was submitted as part of Appendix B, the motion for rehearing in New Jersey Supreme Court.

It seems grossly unjust in this type of case that the petitioners should be required to pay legal fees in addition to the moving charges presented by movers. Although the New Jersey Supreme Court did not deal with the just compensation aspects of the moving expenses, petitioners submit that the rationale for the 1975 Regulations on the issue of counsel fees has always been implicit in the federal relocation regulations. Otherwise, petitioners will be paying the legal fees on funds actually obtained by movers and other suppliers of service.

Therefore, as an equitable grant and/or in the proper implementation of the federal guideline, the court below should have awarded reasonable legal fees. *Cf., Ledesma v. Urban Renewal Agency of City of Edinburg,* 432 F. Supp. 564 (D.C. Texas 1977).

IV.

The New Jersey Supreme Court erred in declining to make an award for interest on relocation expenses.

The Law Division of the Superior Court of New Jersey found that the petitioners were entitled to interest on the relocation expenses at the rate of 8% per annum from the date

of the taking. The Appellate Division modified the decision of the Superior Court and held that interest accrued not from the date of the taking but rather from the date that a particular expense was actually incurred. The New Jersey Supreme Court reversed the Appellate Division in respect of the interest award implicitly on the ground that relocation expenses were not encompassed within the agreement of the parties.

However, petitioners having always considered that moving experts were part of the just compensation package contemplated the receipt of interest. The Agency by entering into the agreements for the payment of relocation expenses in the condemnation action also must have expected the expenses to be within the purview of the condemnation case.

CONCLUSION

This petition involves the applicability and interpretations of federal relocation guidelines to relocation assistance programs as part of urban renewal projects, and, as noted, is concerned with federal issues of substance not heretofore decided by this Court.

It also provides an opportunity for this Court to determine on a rather unique legal situation in that the two lower courts of the State of New Jersey declined to follow the federal guidelines and rejected some claim items. The New Jersey Supreme Court, upheld the applicability of the federal guidelines, but failed to apply them to all the claim items.

There is much uncertainty and confusion in the implementation of the Uniform Federal Relocation Assistance Act. Money that should be distributed on the same basis throughout the nation is not being evenly distributed. Different states such as New Jersey and, for example, New York interpret

the same regulations differently. Attention should be given to this problem on a national level.

This petition is thus predicated on important and special reasons requiring this Court to review the instant matter and to grant the writ of certiorari.

Respectfully submitted,

s/Robert S. Tobin
Attorney for Petitioners

APPENDIX A — DECISION OF THE NEW JERSEY SUPREME COURT

SUPREME COURT OF NEW JERSEY
A-24 September Term 1978

PATERSON REDEVELOPMENT AGENCY, a body corporate and politic,

Plaintiff-Appellant,

v.

MAX SCHULMAN and SALLY SCHULMAN, his wife, and WAMAC, INC., a corporation of the State of New Jersey,

Defendants-Respondents.

Argued October 30, 1978 — Decided

On certification to the Superior Court, Appellate Division.

Mr. Harry Zax argued the cause for appellant (*Mr. Joseph A. LaCava,* attorney).

Mr. Richard L. Rudin, Deputy Attorney General, argued the cause for *amicus curiae* Attorney General of New Jersey (*Mr. John J. Degnan,* Attorney General of New Jersey, attorney).

Mr. Robert S. Tobin argued the cause for respondents.

The opinion of the Court was delivered by PASHMAN, J.

The main issue in this case involves the extent to which defendants Max and Sally Schulman are entitled to

Appendix A

reimbursement for relocation expenses incurred as a consequence of the condemnation of their business property. Also at issue is the propriety of defendants' failure to exhaust administrative remedies prior to filing an appeal to Superior Court. Defendants claim entitlement under the Constitution, the Relocation Assistance Act, N.J.S.A. 20:4-1 *et seq.*, and a consent order entered into with plaintiff Paterson Redevelopment Agency.

On May 20, 1974, the Paterson Redevelopment Agency (Agency) filed a Verified Complaint in Condemnation in order to gain possession of 101-103 and 105-107 River Street in Paterson. These buildings are owned by Max and Sally Schulman and consisted of a one-story office building (105-107) and a four-story warehouse (101-103). Due to the Agency's immediate need for the office building, defendants were permitted to move goods and merchandise into the warehouse at 101-103. Defendants continued to operate their business at this time, using the River Street warehouse and a public warehouse located in Totowa.

Subsequently, on July 8, 1974 the Agency and defendants entered into a consent order signed by Superior Court Judge Edward F. Johnson. That order provided, in relevant part, that:

* * *

> (c) The cost of moving the goods, chattels, and merchandise of the defendant Wamac Inc., from 105-107 River Street to 101-103 River Street shall be paid for by the [Agency] who shall also pay the costs of moving the goods, chattels and merchandise from the first floor of 101-103 River Street to a public bonded warehouse.

Appendix A

> (d) The Paterson Redevelopment Agency shall pay the storage charge for the goods, chattels and merchandise of the defendant in said public bonded warehouse for a period not to exceed December 31, 1974.
>
> (e) The defendants shall be permitted to remain in the four story building at 101-103 River Street, Paterson, New Jersey, until December 31, 1974, but shall have the right to vacate said premises sooner. The cost of moving the goods, chattels and merchandise from the building at 101-103 River Street and from the public bonded warehouse where the defendant stored its goods, chattels and merchandise and the relocation expenses of the defendants shall be paid and billed to the Paterson Redevelopment Agency.

The Agency supplemented this agreement by a letter in which it was provided, among other things, that:

* * *

> 3. [The Agency] will provide reimbursement for all reasonable and necessary in-and-out handling charges associated with and related to the merchandise to be stored.

At the time it entered into the consent order, the Agency expected that federal funding would be available and intended to have reimbursement made in accordance with federal guidelines. Defendants were informed of these plans and were given a federal relocation handbook. Only city funds, however, were ultimately utilized.

Appendix A

Although the consent order required defendants to move from the River Street warehouse no later than December 31, 1974, they remained there, with the Agency's permission, until March 1975. At that time the defendants' business was moved to Carlstadt.

On December 20, 1974, the condemnation commissioners awarded defendants $103,535 for the River Street property. Defendants appealed this award to the Superior Court. Before trial, however, the parties agreed to accept the commissioners' report as to the value of the land and buildings without prejudice to defendants' right to seek compensation for relocation expenses.

When the parties failed to reach agreement as to relocation expenses, the matter proceeded to trial. The Agency objected to the trial being conducted on grounds of failure to exhaust administrative remedies, inasmuch as defendants had never presented their claims to the Agency for final administrative determination. The court rejected this contention, and a trial was held to determine the compensability of 24 moving expense items claimed by defendants.

At the end of the six-day trial, the court found that defendants were entitled to a reimbursement of $105,136.12, of which the Agency had already paid $25,218.25. It approved many of the 24 listed items and modified or rejected others. Judgment for the amount still owing, $79,917.87, was entered on October 21, 1976. Included in the judgment was interest at 8% per annum running from the date of the taking.

The Appellate Division, in an unpublished *per curiam* opinion dated December 14, 1977, affirmed except as to the payment of interest. This item was held to accrue not from the date of the taking but rather from the date that a particular expense was actually incurred. We granted the Agency's petition for certification. N.J. (1978).

Appendix A

I

At every stage of the proceedings below, the Agency has contended that the defendants failed to exhaust their administrative remedies. In its view defendants should have initially presented their claims to the Agency, *N.J.A.C.* 5:11-6.4, requested a hearing, and only then appealed any unfavorable determination to the Superior Court. We conclude that the Agency is correct as to the proper procedure, but that the interests of justice require that we presently decide this case rather than remand it to the Agency.

The Agency correctly relies upon *R.* 4:69-5, which states:

> Except where it is manifest that the interest of justice requires otherwise, actions under *R.* 4:69 should not be maintainable as long as there is available a right of review before an administrative agency which has not been exhausted.[1]

Furthermore, *N.J.S.A.* 20:4-19 provides that

> Any person or business concern *aggrieved by final administrative determination,* concerning eligibility for relocation payments authorized by this act may appeal such determination to the Superior Court. [emphasis added]

The availability of an administrative remedy is manifest. *N.J.S.A.* 20:4-10(a)(2)(3) authorizes the Commissioner of the Department of Community Affairs to adopt rules and regulations necessary to assure:

---

1. *R.* 4:69 deals with actions in lieu of a prerogative writ.

(2) that a displaced person who makes proper application for a payment authorized for such person by this act shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of a payment, may have his application reviewed by the head of the taking agency or other appropriate officer.

Such administrative procedures have, indeed, been devised. *N.J.A.C.* 5:11-1.1 *et seq.* A claim for relocation payments by a business concern must be submitted to the local agency within six months after displacement. *N.J.A.C.* 5:11-6.4. The agency must then determine the claimant's eligibility and make payment as promptly as possible. *N.J.A.C.* 5:11-6.5. The regulations, in accordance with the mandates of the Administrative Procedure Act, further provide for grievance procedures including hearings before an examiner designated by the Commissioner. *N.J.A.C.* 5:11-2.16. These procedures were not followed by defendants.

It is clear from the foregoing that the proper procedure to be followed in relocation cases is for the claimant to present his demands, including any necessary substantiating documents, to the local agency. If the claimant is dissatisfied with the amounts granted, he should then request a hearing as provided in *N.J.A.C.* 5:11-2.16. Only after the hearing has taken place and a final adverse agency determination has been entered may the claimant request judicial intervention by appeal as of right to the Appellate Division *R.* 2:2-3(a)(2).

Defendants contend that compensation is basically a constitutional issue and thus belongs within the judicial

jurisdiction.[2] Even assuming that defendants have raised a question of constitutional dimension, we are unable to accept the conclusion that this alone justifies an exception to the general doctrine of exhaustion of administrative remedies.

The requirement of administrative exhaustion serves several purposes. First, it "is a rule of practice designed to allow administrative bodies to perform their statutory functions in an orderly manner without preliminary interference from the courts." *Brunetti v. Borough of New Milford,* 66 *N.J.* 576, 588 (1975). *See Ward v. Keenan,* 3 *N.J.* 298, 302 (1949). In this respect the rule ensures that claims will be heard, as a preliminary matter, by the body having expertise in the area. This is particularly important where the ultimate decision rests upon factual determinations lying within the expertise of the agency or where agency interpretations of relevant statutes or regulations are desirable.

A second reason for requiring exhaustion of administrative remedies is to further the general policy of avoiding unnecessary adjudication. The administrative process provides a statutory framework in which the issues may often be settled on a statutory grounds without judicial adjudication of constitutional claims. The Agency decision may, in many cases, satisfy the claimant, thus obviating the need for the courts to act and alleviating their caseload burden. This reluctance to adjudicate unnecessarily is particularly compelling in constitutional cases where decisions have greater gravity and permanence.

---

2. The contention is made that the landowner is entitled to moving expenses as a matter of constitutional law, this being part of the "just compensation" for which our state and federal constitutions provide. The case of *Housing Auth., Bor. of Clementon v. Myers,* 115 *N.J. Super.* 467 (App. Div. 1971) is cited in support. In view of the ground upon which we have chosen to rest this opinion, it is unnecessary to consider this contention, the resolution of which we leave to another day.

Even if there are constitutional implications in the issues presented, it is well settled that the mere presence of such questions does not suffice to abrogate the exhaustion requirement. *See, e.g., Brunetti v. Borough of New Milford, supra,* at 590; *Roadway Express, Inc. v. Kingsley,* 37 *N.J* 136, 140 (1962); *Mut. Home Dealers Corp. v. Comm. of Bank and Ins.,* 104 *N.J. Super.* 25, 31 (Ch. Div. 1968), aff'd *o.b.,* 55 *N.J.* 82 (1969). In *Brunetti,* this Court stated that

> In mere allegation that a constitutional issue is involved does not relieve plaintiffs of the exhaustion requirement. To avoid this requirement, plaintiff must demonstrate not only that the constitutional question is colorable, but that the matter contains no factual questions which require administrative determination.
>
> [*Brunetti, supra,* 68 *N.J.* at 590]

It is clear that relocation cases present numerous factual issues relating to the reasonableness of claims and the applicability of statutory provisions and regulations.

We therefore conclude that relocation claims must first be presented to the local agency. Because that agency lacks proper jurisdiction to decide constitutional claims, such issues should merely be noted, as is generally done in the municipal court. Factual presentations relevant to the constitutional issues may be made, however, to ensure an adequate record for determination on appeal. In this way both the integrity of the administrative system and the defendant's right to a judicial determination of constitutional issues will be presented.

II

Having found the procedure utilized in the instant case to be improper, we must decide whether to remand the matter to

the Agency for further proceedings. We conclude, for the reasons stated below, that the interests of justice mandate that we instead decide the instant case on its merits.

First and foremost among these reasons is the amount of time that has elapsed since proceedings below were initiated — more than four and one-half years. To require a remand at this stage would only occasion further delay. This isrelated to a second reason supporting the result that we have reached, which is the extensive amount of testimony that has already taken place. One of the primary reasons for requiring administrative exhaustion is the opportunity to create a factual record. In this case such a record has already been established and there would be little gained by a remand.

We are also influenced in our decision by several other factors. Defendants had not raised this issue on appeal from the compensation award through any desire to circumvent the proper procedure but, rather, in the good faith belief that relocation expenses were a part of the just compensation to be awarded by the commissioners and therefore properly cognizable by the Superior Court. Although we conclude that they were incorrect, we decline to penalize them for their reasonable mistake by any further delay. Further, the existence of an agreement in this case presents a unique situation making judicial decision more appropriate.

III

Having reached the substantive issue in this case, we must decide which of defendants' claims are compensable. Although the trial court based its decision upon both constitutional and New Jersey statutory provisions as well as the consent order, we find that the issues are governed by the agreement between the parties and rely solely on our interpretation of the agreement.

Appendix A

A.

The Agency claims, as a preliminary matter, that it lacks the power to make agreements promising financial incentives beyond those specifically permitted by the relevant statutes. We disagree. The Agency has been given a wide range of powers by statute, including the power to condemn property, to make and execute contracts or other instruments necessary or convenient to the exercise of its powers, and to pay or compromise claims arising from agreements. *N.J.S.A.* 40:55C-12(a)(g)(j). Furthermore, the enumerated powers are to be interpreted broadly to effectuate the purposes of the Act and are not to be read as a limitation. *N.J.S.A.* 40:55C-29. This is consistent with the general rule that statutes giving powers to municipal corporations are to be liberally construed, *Scatuorchio v. Jersey City Incinerator Authority,* 14 *N.J.* 72, 85 (1953); *N.J. Const.* (1947), Art. IV, §VII, par. 11, and that additional powers may arise by fair implication from those expressly conferred. *Palisades Properties, Inc., v. Brunetti,* 44 *N.J.* 117, 133 (1965).

In accordance with these statutory mandates and rules of construction, we conclude that the Agency has the power to make such agreements when necessary to achieve its purpose of clearing and redeveloping blighted areas. Such agreements may be desirable, for example, where quick removal is necessary and can be effectuated by giving the property owner financial incentives additional to those provided in the statute. This does not mean, however, that all such agreements are valid. The agency would be beyond its power, for example, were it to offer financial considerations not in the nature of additional moving expense coverage.

B

We now reach the question as to the terms of the agreement and the compensability of defendants' alleged expenses. After

Appendix A

reviewing the record, we conclude that the Agency agreed generally to compensate for all reasonable relocation expenses and that the parties specifically agreed, as found by the trial court, that federal relocation guidelines would apply. We thus proceed to a determination as to which of the expenses are encompassed within that agreement. In the interest of brevity, we will not address each claim individually, but instead merely note that we affirm the award of the trial judge with the following modifications.

As to Item 1, which involved certain warehousing, trucking and storage expenses, we find the defendants entitled to only $18,050.54, rather than the $22,367.86 awarded below. Of the amount claimed, $4,317.32 derived from warehousing charges incurred after December 31, 1974 which was the date to which the consent order explicity limited storage charges. This time period was not extended by the Agency's allowing defendants to remain beyond that date as that grant specifically denied any right to storage payments beyond December 31.

Item 7 dealt with costs attributable to the replacement of display cards and stationery items. Defendants contended that they were entitled to payments of $31,621.41 for these items. We conclude that the defendants have failed to show that the amount of stationery printed was reasonable or that overprinting was not feasible. We find that the Agency contention is correct and that $1,400 for the overprinting of stationery should be allowed. This figure, however, does not include catalog expenses. In this regard we hold that defendants are only entitled to payments covering the cost of preparing a stamp and placing the correct address on their catalogs. Alternatively, defendants may affix stickers showing their new address.

The Agency has agreed to pay Items 10, 12 and 13, relating, respectively, to telephone reconnections, insurance on

warehouse goods, and a burglar alarm, subject to the production of bills and the insurance policy. We therefore hold those items compensable on the condition that such documents be delivered to the Agency within 60 days of this opinion.

The trial court allowed an aggregate of $6,524 for Items 17 through 19. Item 17 represented closing fees for the new plant. Item 18 was for a mortgage application fee and Item 19 was the cost of an appraisal in connection with that application. All of these expenses should have been disallowed. They are not compensable under either state or federal regulations. Nor were they comprehended within the agreement of the parties, inasmuch as they represented costs associated with the new property and not relocation expenses.

Finally, we conclude that plaintiffs are not entitled to interest on the judgment. Experts for both sides testified that interest was not provided for by either state or federal regulations. We agree. Although the Eminent Domain Act grants interest for condemnation awards, *N.J.S.A.* 20:3-31, that Act does not apply to relocation expenses but merely to the value of the condemned property. In this respect we agree with the Appellate Division. That court, however, granted interest as part of the agreement between the parties. We conclude that interest is not fairly encompassed within the consent order and supplemental agreement. Since there is no state provision granting interest for relocation expenses, we decline to make any award therefor.

We therefore conclude that defendants are entitled to judgment for the following:

1.	Warehousing, trucking and storage	$18,050.54
2.	Payroll — moving from Paterson to Totowa	600.00

3.	Handling charges from warehouse to River Street	747.61
4.	Supervisory payroll — from 107 River Street to 101 River Street, not included above	600.00
5.	Moving expenses from warehouse to Carlstadt plant	15,000.00
6.	Moving expenses from River Street to Carlstadt	23,700.00
7.	Replacement of display cards and stationery items	1,400.00
8.	Relocation search	500.00
9.	Telephone reconnections	483.20
10.	Certificate of Occupancy	50.00
11.	Insurance on warehouse goods	1,242.50
12.	Burglar alarm	500.00
13.	Supervisory payroll from Paterson to Carlstadt	600.00
14.	Relocating burglar alarm from 105-107 to 101-103 River Street	414.75
15.	Relocating telephone from 105-107 to 101-103 River Street	184.79
	Total	$64,073.39

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We note that $25,218.25 of this amount has already been paid by the Agency. Furthermore, the amounts for the telephone reconnections ($483.20), insurance on warehouse goods ($1,242.50), and burglar alarm ($500.00) need only be paid if proper documents are submitted within 60 days.

Finally, defendants are entitled to payments, albeit nominal, for readdressing their catalogs. As there is no evidence in the record as to the cost of such an undertaking, it must be treated as a separate matter. If defendants desire compensation for such expenses, they must present their claims to the Agency through the mandated procedures. This item does not affect the judgment already granted which will be paid as discussed above.

For the foregoing reasons, the opinion of the Appellate Division is modified and, as modified, affirmed.

APPENDIX B — PETITION FOR REHEARING

SUPREME COURT OF NEW JERSEY

Docket No. 14263

PATERSON REDEVELOPMENT AGENCY

Petitioner-Appellant,

vs.

MAX SCHULMAN and SALLY SCHULMAN his wife, and WAMAC, Inc., a corporation of the State of New Jersey,

Defendant-Respondent.

PETITION FOR REHEARING, AFFIDAVIT OF ATTORNEY'S SERVICES, CERTIFICATION OF GOOD FAITH, CERTIFICATION OF MAILING

ROBERT S. TOBIN
Attorney for Defendant-Respondent
152 Market Street
Paterson, New Jersey 07505
(201) 881-8554

The Defendant-Respondent respectfully petitions this Court for a rehearing and a recall or modification of its decision dated January 4, 1979.

The basis of this petition is that it appears that certain material portions of the record may not have been considered by the Court. These portions of the record might well have altered the Court's decision and judgment.

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This Court decided that the compensability of the items in the claim should be solely determined by the intent of the parties as evidenced in the Consent Order and supplemental agreement thereto and that the parties thereto had intended the Federal guidelines to apply to these agreements.

Throughout this litigation petitioner argued that the Federal guidelines at least should be included among the standards applicable to this matter but until this Court's decision such guidelines had been excluded.

Thus, if the Federal regulations provided for certain relocation expenses, which were eliminated by the Trial Court and the Appellate Division, it would follow that this Court should give them consideration insofar as they were found to be encompassed within the agreements.

It is respectfully submitted that there are additional claim items in the record that may not have been so considered within this framework.

This situation may have come about because Petitioner, as the prevailing party, did not cross-petition for certification to the Appellate Division. Thus, certain points in the cross-appeal may not have been reviewed by this Court.

If the Court has not already reviewed the elements of the cross-appeal, it is respectfully requested that it do so on this petition for the following reasons.

It is respectfully submitted that this Court essentially sat as a Court of first impression in hearing and deliberating on this case.

It made new factual findings with regard to stationery and display cards (Item 7) and found that the factual issue of the

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parties' intentions in entering the two agreements was the key element to be considered. It then found that certain items such as interest, closing fees, etc. were not contemplated by the parties.

The Defendant-Respondent is fully in accord with the procedure that the Court adopted in this case but is of the opinion that if the case was basically reconsidered in its entirety by this Court, all of Defendant-Respondent's claims and record thereon submitted to the Trial Court should also be considered. In particular, the claim items concerned are 14, 15 and 20. Item 14 was the roof repair at the new plant in the amount of $23,100.00. Item 15 was repair of the loading dock at new location, in the amount of $27,000.00. Item 20 was legal fees in connection with this litigation.

Additionally, a rehearing on claim Item 7 in the amount of $31,621.41 for replacing of display cards and stationery is requested because the Court's decision on this item may have overlooked the intention of the Federal regulations' bearing on this item.

With respect to Item 7 (covered by the 1971 Federal regulations) the Court found that the Defendant-Respondent did not prove its entitlement to the replacement cost of the stationery and display cards therewith concerned. It is respectfully submitted that the option under the Federal guidelines as to whether replacement expenses or overprinting expenses is to apply depends on the relocatee's option, not that of the moving agency (Db 4-20 and Db 7a). Thus, the intention of the parties was that the option would be that of petitioner. This is reasonable when it is to be remembered that petitioner was found by the Trial Court to have sustained its burden of establishing that compensation for this item should be made in the amount of $31,681.41 on the ground that its customers would not accept other than reprinted merchandise. Moreover,

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the old stationery and printed items were in fact completely replaced and still remain in storage for further verification purposes if the need should arise. Plaintiff did verify the quantity and cost of this item just before the trial.

Items 14 and 15 also appeared in the 1971 Federal regulations (Db 14a, et seq.). Thus, these expenses would be compensable as being within the Federal guidelines and the intention of the parties. As noted these items were covered in our cross-appeal to the Appellate Division (Db 20 and 21).

Additionally, the petitioner respectfully asks this Court to grant counsel fees in the judgment.

On information and belief, the February 1975 Federal regulations (Db 11a and 12a),* enacted and effective before the incurrence of the legal fees for this litigation (with respect to all but 27 hours as set forth in the accompanying affidavit of services), provides for the payment of legal fees in this kind of case. Defendant respectfully requests this Court to find that counsel fees in an amount as it shall determine should be added to the judgment.

It seems unjust for the Defendant-Respondent to be required to pay legal fees in addition to the moving charges of individuals and entities who submitted the bills for which this Court has determined that compensation should be paid.

In effect, what happens thereby, is that because the judgment will be paid to movers, warehousemen, etc., petitioner will have lost even though he has prevailed in many disputed issues. He will pay the legal fees on funds actually obtained by others.

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* Enacted February 20, 1975, to be effective March 31, 1975.

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WHEREFORE, Defendant-Respondent respectfully requests this Court to grant this petition for rehearing and upon such rehearing to grant further relief as requested in the petition and to recall or modify its decision of January 4, 1979, accordingly.

ROBERT S. TOBIN
Attorney for Defendant-Respondent on behalf of Max Schulman, Sally Schulman and WAMAC, Inc.

APPENDIX C — ORDER DENYING MOTION FOR REHEARING

SUPREME COURT OF NEW JERSEY

M-788 SEPTEMBER TERM 1978

PATERSON REDEVELOPMENT AGENCY,

Plaintiff-Respondent,

vs.

MAX SCHULMAN, et al,

Defendants-Movants.

This matter having been duly presented to the Court, it is ORDERED that the petition for rehearing is denied.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 13th day of March, 1979.

s/ Stephen W. Townsend
Clerk

FILED
Mar. 13, 1979
s/ Stephen W. Townsend
Clerk

A TRUE COPY

s/ Stephen W. Townsend
Clerk

APPENDIX D — ORDER DENYING COUNSEL FEES

SUPREME COURT OF NEW JERSEY

M-789 SEPTEMBER TERM 1978

PATERSON REDEVELOPMENT AGENCY,

Plaintiff-Respondent,

vs.

MAX SCHULMAN, et al,

Defendants-Movants.

This matter having been duly presented to the Court, it is ORDERED that the motion for counsel fees is denied.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 13th day of March, 1978 [sic].

s/ Stephen W. Townsend
Clerk

FILED
Mar. 13, 1979
s/ Stephen W. Townsend
Clerk

A TRUE COPY
s/ Stephen W. Townsend
Clerk

APPENDIX E — AFFIDAVIT OF LEGAL SERVICES

SUPREME COURT OF NEW JERSEY

Docket No. 14263

PATERSON REDEVELOPMENT AGENCY

Petitioner-Appellant,

v.

MAX SCHULMAN and SALLY SCHULMAN, his wife, and WAMAC, Inc., a corporation of the State of New Jersey,

Defendant-Respondent.

STATE OF NEW JERSEY)
ss.:
COUNTY OF PASSAIC)

ROBERT S. TOBIN, an attorney at law of New Jersey, upon his oath, deposes and says:

1. I was admitted to practice in New Jersey in December 1956, Alabama 1953 and New York 1959.

2. I was employed by the Port Authority of New York and New Jersey from 1957 to 1969.

3. Since that time I have been in private practice specializing in the trial of condemnation and related cases.

4. I am the attorney for the above-named Defendant-Respondent and have been from the inception of the litigation through the hearing and determination of the Supreme Court. I have had the sole responsibility for this matter.

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5. I was retained by Defendant-Respondent, Max Schulman, Sally Schulman and WAMAC, Inc. on June 20, 1974 to advocate the position of the Defendant-Respondent in the corresponding condemnation case on a contingency fee of 20% over the offer of the condemning authority.

6. In connection with relocation expenses, I was retained and the fee was to be agreed upon at a future time. No such formal agreement was ever made.

7. The contingency fee with regard to the acquisition of the land and buildings has been paid.

8. The attorney's fee for the trial before Judge Rosenberg; work before the Appellate Division and the work before the Supreme Court has not been paid except that the sum of $1,000.00 relocation expenses was paid in connection with the payment of $25,518.25 paid herein.

9. The following is a statement of the number of hours devoted to this case since 1974, other than to the preparation and trial on the issue of the value of the land and buildings:

a) 1974 — 20 hours
b) 1975 — 33 hours
c) 1976 — 125 hours
d) 1977 — 30 hours
e) 1978 — 20 hours

Total — 228 hours

10. My most recent per hourly retainers have been at the rates of between $85.00 to $100.00 per hour.

11. As permissible facts to be considered in a Certification of Service, I refer the Court to the outcomes in the Trial Court, the Appellate Division and the Supreme Court.

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12. I submit the issues were novel and sophisticated requiring knowledge of condemnation and relocation law.

13. I submit that the fair and reasonable value of my services in connection with this matter is $25,000.00.

14. This certification and the petition to which it is appurtenant are submitted in good faith and not for purpose of delay.

WHEREFORE, I respectfully request this Court to make an award for this amount as compensable counsel fees.

s/ Robert S. Tobin

Sworn to before me this
day of January, 1979.

APPENDIX F — 1971 FEDERAL REGULATIONS, RELOCATION HANDBOOK 1371.1 CHG. 1, CHAPTER 6 SECTION 5, PARAGRAPH 76

76. RELETTERING AND PRINTING. Expenditures for relettering trucks, signs, and similar items used by a displaced business concern in the operations of its business, *and the amount paid* (less salvage value, where appropriate) *for printing a reasonable supply of printed matter to replace that made obsolete as a result* of the *move may be compensable as a moving expenses.* The duplication of a tenant's sign painted on a door or window may also be compensable as a moving expense. *If a business elects to overprint or overstamp stationery* or other printed matter, expenditures for a reasonable supply thereof may be compensable as a moving expense reimbursable through a relocation payment. No payment for property loss may be made on the items for which a relocation payment for moving expenses has been made. [Emphassis added.]

APPENDIX G — 1971 FEDERAL REGULATIONS, RELOCATION HANDBOOK 1371.1 CHG. 1, CHAPTER 6 SECTION 5, PARAGRAPH 81

81. PHYSICAL CHANGES AT NEW LOCATION.

a. *Policy.* The cost of making physical changes in or to a building to which a business concern relocates may be eligible as a moving expense under the following provisions and limitations:

* * *

(3) *Changes in or to a building or structure* may not increase the value of the building or structure for general purpose uses, may not increase the structural or mechanical capacity of the building or of its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute, nor include building or structural alterations required by local building codes and ordinances, *except* if required for the installation of specific types of equipment moved from the old location *or necessary for the continuation of the business.* No relocation payment in connection with a change in or to a building or structure shall be made for any items for which compensation was made as an acquisition cost at the old location. [Emphasis added.]

APPENDIX H — 1975 FEDERAL REGULATIONS, RELOCATION HANDBOOK 1371.1 REV., CHAPTER 6 SECTION 2, PARAGRAPH 6-14:h

6-14. MOVING EXPENSES — ELIGIBLE EXPENDITURES. A relocation payment for actual reasonable moving expenses may include the cost of:

* * *

h. *Any professional services necessary to the planning, preparation for, or accomplishment of the move of tangible personal property to the new location or to enable reestablishment at the new location, including but not limited to, fees or charges for the services of architects, attorneys, engineers, or consultants.* [Emphasis added.]

APPENDIX I — DECISION OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-976-76

PATERSON REDEVELOPMENT AGENCY,

Plaintiff-Appellant
and Cross-Respondent,

v.

MAX SCHULMAN and SALLY SCHULMAN, his wife, and WAMAC, INC., a corporation of the State of New Jersey,

Defendant-Respondent
and Cross-Appellant.

Argued November 29, 1977 — Decided Dec. 14, 1977

Before Judges Lora, Seidman and Milmed.

On appeal from Superior Court, Law Division, Passaic County.

Mr. Harry Zax argued the cause for appellant (Mr. Joseph A. LaCava, Corporation Counsel, attorney).

Mr. Robert S. Tobin argued the cause for respondent.

PER CURIAM

Except for that portion thereof which orders "that interest from May 23, 1974 [the date of the taking] will be awarded at the rate of 8% per annum," the judgment under review is

affirmed essentially for the reasons expressed by Judge Rosenberg in his letter opinion of October 1, 1976, which reasons we find upon a careful review of the record to be fully supported therein.

In awarding interest on those relocation and related expenses incurred by plaintiffs which the trial judge allowed, and for which plaintiffs were not reimbursed by the redevelopment agency, the trial judge directed that such interest be paid from the date of the taking. However, we do not believe that *N.J.S.A.* 20:3-31, the section of the Eminent Domain Act pertaining to computation of interest in a condemnation award, applies here. The relocation and related expenses were not claimed in the condemnation proceedings, nor did they in any way enter into the award made by the condemnation commissioners. *Cf. Housing Auth. Bor. of Clementon v. Myers,* 115 *N.J.Super.* 467 (App. Div. 1971). Rather, they stemmed from a subsequent consent order resolving the controversy between the parties over possession of the premises taken, and a later supplemental agreement relating thereto.

It is our view, in the circumstances, that interest on non-reimbursed relocation and related expenses should be computed only from the date the particular expense was actually incurred until the date of the judgment entered herein.

The judgment is modified accordingly. As modified, it is affirmed. The matter is remanded to the trial court solely for the purpose of computing the amount of interest payable to the date of the judgment. Jurisdiction is not retained.

APPENDIX J — DECISION OF THE SUPERIOR COURT, LAW DIVISION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION — PASSAIC COUNTY

Docket No. L 29936-73

(CIVIL ACTION IN CONDEMNATION)

ROBERT S. TOBIN, Esq.
152 Market Street
Paterson, New Jersey 07505
(201) 345-1131
Attorney for Defendants

Plaintiff

PATERSON REDEVELOPMENT AGENCY, a body corporate and politic,

vs.

Defendants

MAX SCHULMAN and SALLY SCHULMAN, his wife, and WAMAC, INC., a corporation of the State of New Jersey.

The above cause having come on for hearing by the Court, without a Jury.

IT IS, on this 21st day of October, 1976,

ORDERED, that judgment be entered in favor of the defendants, MAX SCHULMAN and SALLY SCHULMAN, his wife, and WAMAC, INC., and against the plaintiff, PATERSON REDEVELOPMENT AGENCY, in the amount of $105,136.12, and it is further

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ORDERED, that from such award there shall be deducted the sum of $25,518.25 previously paid by plaintiff to defendants; and it is further

ORDERED, that interest on such sum (s) previously paid be computed only to the date of such payment; and it is further

ORDERED, that interest from May 23, 1974 will be awarded at the rate of 8% per annum.

s/ Theodore D. Rosenberg
Theodore D. Rosenberg J.S.C.

SUPERIOR COURT OF NEW JERSEY

THEODORE D. ROSENBERG
Judge

COURT HOUSE
PATERSON, NEW JERSEY

October 1, 1976

Michael K. Diamond, Esq.
Diamond, Diamond & Afflitto, Esqs.
126 Market Street
Paterson, New Jersey 07505

Robert S. Tobin, Esq.
35 Church Street
Paterson, New Jersey 07505

Re: Paterson Redevelopment Agency v. Max Schulman and Sally Schulman and WAMAC, Inc.
Docket No. L-29936-73

Appendix J

Gentlemen:

Defendants, Max Schulman and Sally Schulman, were the owners of property located at 101-107 River Street. Defendants were in the business of selling sporting good items and their inventory was warehoused at the River Street site under the name of Wamac, Inc. Plaintiff, Paterson Redevelopment Agency, a body corporate and politic of the State of New Jersey, was in urgent need of defendants' premises and acquired said property on May 23, 1974, through exercise of the power of eminent domain. The acquired property was to be utilized in the Loop Road #III Project, ultimately financed solely by local funds. Condemnation Commissioners were appointed pursuant to *N.J.S.A.* 20:3-12 to determine an appropriate award, and defendants were awarded the sum of $103,535. On January 16, 1975, defendants filed a notice of appeal of the award. In the interim period a consent order was entered into permitting defendants to maintain their business at the 101-103 River Street site and to place the inventory in a public bonded warehouse. Defendants have agreed to accept the commissioners' award solely as to the valuation of the land and buildings acquired. Still in dispute is the appropriate compensation to be awarded for moving and related expenses arising from the condemnation.

An action to recover moving and related expenses is supportable on three legal bases: 1) the consent order and supplemental agreements entered into between the Redevelopment Authority and defendants; 2) the 1971 Relocation Assistance Act, *N.J.S.A.* 20:4-1 *et seq.*, as amplified by the Relocation Assistance Program, *N.J.A.C.* 5:11-1-1 *et seq.*, and 3) case law.

The key documents in the case at bar are the consent order and the supplemental agreement. Under the agreement defendants were to vacate 105-107 River Street, Paterson, N.J., and move to 101-103 River Street. Eventually, defendants moved the warehousing business to Carlstadt, N.J. The key provisions pertinent to this litigation are:

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(c) The cost of moving the goods, chattels, and merchandise of the defendant, Wamac Inc. from 105-107 River Street to 101-103 River Street shall be paid for by the plaintiff who shall also pay the costs of moving the goods, chattels and merchandise from the first floor of 101-103 River Street to a public bonded warehouse.

(d) The Paterson Redevelopment Agency shall pay the storage charges for the goods, chattels and merchandise of the defendant in said public bonded warehouse for a period not to exceed December 31, 1974.

(e) The defendants shall be permitted to remain in the four story building at 101-103 River Street, Paterson, New Jersey until December 31, 1974, but shall have the right to vacate said premises sooner. The cost of moving the goods, chattels and merchandise from the building at 101-103 River Street and from the public bonded warehouse where the defendant stored its goods, chattels and merchandise and the relocation expenses of the defendants shall be paid and billed to the Paterson Redevelopment Agency.

By letter of June 28, 1974 the Agency further agreed to pay all reasonable costs for disconnecting and reinstalling telephones and reimbursing "*all* reasonable and necessary in-and-out handling charges associated with and related to the merchandise to be stored."

The Relocation Assistance Act establishes, as the public policy of New Jersey, that persons displaced by acquisition of real property by the State or local programs will be assisted through relocation payments. Specifically, *N.J.S.A.* 20:4-4(a) provides:

(i)f a taking agency acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and businesses as required by this act, for:

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property,

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the taking agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

The Relocation Assistance Program regulations, promulgated by the Department of Community Affairs, amplify the Relocation Assistance Program by establishing detailed guidelines for payments to businesses. These regulations, effective September 26, 1972, duly promulgated under properly delegated powers, will be accorded the force of law and applied to the case at bar. *State v. Atlantic City Electric Co.*, 23 *N.J.* 259, 270 (1957); *Rutgers Council v. N.J. Bd. Higher Education*, 126 *N.J. Super.* 53, 63 (App. Div. 1973). Although the parties apparently agreed to be bound by federal regulations promulgated by the Department of Housing and Urban Development, there has been no evidence introduced demonstrating federal funding of this particular project (Loop Road #III), therefore, the court will not give effect to the federal regulations.

New Jersey case law, in addition, establishes moving expense reimbursement as part of the just compensation package. The

leading case in this area is *Housing Auth., Bor. of Clementon v. Myers*, 115 *N.J. Super.* 467 (App. Div. 1971). Prior to the *Myers* decision the law of New Jersey prohibited payment of moving expenses. In *Myers* the court stated:

> We have no quarrel with a rule disallowing alleged damages of a speculative nature, such as loss of business and good will. On the other hand, in the case of moving expenses which are actual and demonstrable, so that any complaint of their speculative and hypothetical nature disappears, the only reasonable argument for their exclusion also disappears.
>
> To the extent that the rule excluding reasonable moving expenses as damages might have been thought to be the law in New Jersey, we believe it no longer viable, and hold to the contrary. Recognizing that the Appellate Division may not declare the law contrary to pronouncements of our Supreme Court and exchewing absolutely an arrogation of the exclusive right of the Supreme Court to alter the law as thus announced, we express our opinion that the result in *State v. Gallant* in general and the reference to and quotation therein from the Note, 36 *Oregon L. Rev.* 180, at pp. 180-181 (1957) (42 *N.J.* at 588) in particular, have implicitly overruled *Newark v. Cook* and the adoption of its "rule" in *American Salvage Co. v. Housing Authority* of Newark.)

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Ascertainment of what constitutes just compensation is peculiarly a judicial function lying within the court's discretion. *Id.* at 477. In evaluating the *Myers* decision in light of the Eminent Domain Act, Judge Crane in *State v. P. & C. Realty Co., Inc., et al.*, 121 *N.J. Super.* 554 (Law Div. 1973) revealed the underlying rationale for Clementon:

> The rule of the *Myers* case has not been abrogated in any sense by the enactment of the Eminent Domain Act of 1971. The rationale of the case was not dependent solely on statutory construction. Rather, it was founded upon notions of fundamental fairness in the light of "contemporary realities" in interpreting the constitutional phrase "just compensation" as it appears in N.J. Const. (1947), Art. 1, par. 20. "The Legislature cannot in any event constitutionally mandate the payment of less than 'just compensation' as the courts determine that to be." *Myers, supra,* 115 *N.J. Super.* at 479.

In essence, *Myers* has established a separate and independent basis, the New Jersey Constitution, for the court to award reasonable moving expense. Although *Myers* and *P. & C. Realty* involve the moving expenses of a condemned manufacturing business, the mandate of *Myers* is broad enough to extend to the condemnation of a warehousing operation. *Cf. Town of Montclair v. D'Andrea,* 131 *N.J. Super.* 243 (Law Div. 1974), (condemnation of restaurant). Thus, utilizing its independent constitutional basis, the court will exercise its discretion and permit reasonable moving expenses. The function of this court is to determine which of defendants' claimed moving expenses are reasonable so as to provide litigants with a sum tantamount to just compensation. The court will rely heavily on the intent of the consent order and the regulations

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promulgated by the Department of Community Affairs. The regulations, however, shall not be dispositive of all issues, since the court is empowered to exercise its discretion as it sees fit.

Defendants seek reimbursement for the following items:

(1)	Warehousing, trucking, and storage	$22,367.86
(2)	Payroll — moving including supervisory, 5 weeks	4,121.73
(3)	Handling charges back to River Street from warehouse	747.61
(4)	Supervisory payroll moving from 107 River Street to 101 River Street, not included above	1,000.00
(5)	Moving expense from warehouse to Carlstadt plant	15,000.00
(6)	Moving expenses from River Street to Carlstadt	23,700.00
(7)	Replacement of display cards and stationery items	31,621.41
(8)	Storage on stationery	937.50
(9)	Relocation search	2,000.00
(10)	Telephone reconnections	483.20
(11)	Certificate of Occupancy	3,049.00

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(12)	Insurance on warehouse goods	1,242.50
(13)	Burglar alarm	500.00
(14)	Roof repair on new plant	23,100.00
(15)	Repair loading dock and grade at new plant	27,000.00
(16)	Supervisory payroll in move from Paterson to Carlstadt	4,080.00
(17)	Closing fees for new plant	5,724.00
(18)	Application fee for mortgage to State agency	250.00
(19)	Appraisal in connection with (18)	550.00
(20)	Legal fees relating solely to moving and related expenses and this litigation —*estimated* (to be based on signed retainer agreement)	25,000.00
(21)	Consulting fees in connection with litigation	1,800.00
(22)	Relocating burglar alarm from 105-107 to 101-103 River Street	414.75
(23)	Telephone — same as (22)	184.79
(24)	Lawful interest on the unpaid balance of condemnation award relating solely to the above items from 5/23/74 at 6% to 5/23/76	23,724.31

Appendix J

Total	$221,426.92
less payments to date	25,518.25
Balance of just compensation due:	$195,908.67

Initally, the court notes that the Redevelopment Agency admits that items 10, 12 and 13 are to be paid. Further, items 22 and 23 are parallel to items 10 and 13 and will be permitted. Involved in this case are two moves: the initial move from 105-107 River Street to 101-103 River Street and a later move from River Street to a warehouse in Carlstadt, New Jersey. Under state regulations both permanent and temporary moves are covered. *N.J.A.C.* 5:11-10,20. The consent order demonstrates an intent to keep defendants' business operating and to pay such expenses. Thus, evidence has been introduced and the court will allow $22,367.86 for item 1, $600 for item 2 as there is insufficient verification of the amount of time worked, and $747.61 for item 3.

Moving expenses are clearly recoverable under *N.J.A.C.* 5:11-6.8 and 5:11-10.3. Evidence has been introduced warranting awarding of $15,000 for item 5 and $23,700 for item 6, and these are likewise awarded.

Item 7 involves the replacement of stationery and display signs. Although the regulations and consent order are silent as to the compensable nature of such items, the concept of just compensation requires payment. Since Wamac was forced to discontinue its business at the River Street address, there was a definite need for new stationery indicating its current location. Clearly, the old stationery had no use at a new location. Therefore, the court finds that the quantity and cost of printing were reasonable and $31,621.41 should be awarded; however, an award for the storage of stationery under item 8 will not be permitted.

Item 9 is a request for reimbursement for relocation search expenses. *N.J.A.C.* 5:11-10.4 permits payment of "actual reasonable expenses incurred by a business . . . limited to $500 unless the local agency determines a greater amount is justified." Defendants shall only be awarded the maximum amount, $500.

Item 11 involves expenses incurred in obtaining a certificate of occupancy. The testimony reveals that certain structural work was undertaken at the Carlstadt warehouse in order to obtain a certificate of occupancy. *N.J.A.C.* 5:11-10.5 permits payment of inspection fees required by local law. There is no mention of engineering allowances, therefore, only the $50 occupancy fee will be recoverable.

Item 14, roof repair and item 15, loading dock repairs, at the new facility in Carlstadt, raise a problem allied to the structural work performed under item 11. The policy underlying the Relocation Assistance Program is to avoid double recoveries, as no party should be compensated twice for the same property. *N.J. Sports & Exposition Auth. v. E. Rutherford,* 137 *N.J. Super.* 271, 292 (Law Div. 1975). Here, defendants have accepted compensation for the land and buildings at River Street. The regulations expressly prohibit physical changes at the new location which would increase the value of the building for general purpose uses. *N.J.A.C.* 5:11-10.9(a)(3). Clearly, such strucual [sic] changes were subsumed in the acquisition of the the River Street property, therefore these items will be disallowed.

Although the regulations and consent order do not expressly provide for closing fees (item 17), and mortgage application fees (item 18), the court finds that awarding of these fees is a necessary part of just compensation. Therefore, a closing fee of $5,724 and a mortgage fee of $250 will be awarded. Additionally, the costs of an appraisal for the mortgage, $550 (item 19) will be awarded.

Items 20 and 21 request counsel and expert fees. The general rule as to applications for counsel and expert fees in condemnations is that they are not allowed. *Housing Auth. of Long Branch v. Valentino,* 47 *N.J.* ___ 265, 268 (1966). In *N.J. Tpk. Auth. v. Bayonne Barrel & Drum Company,* 110 *N.J. Super.* 506 (Law Div. 1970) the court held that counsel fees in Eminent Domain Acts were allowable since the condemnor subjected the condemnee to extended and costly litigation. The position enunciated by the court in *Bayonne Barrel* was expressly rejected by the Appellate Division in *State v. Mandis, et al.,* 119 *N.J. Super.* 59, 60-61 (App. Div. 1972). Since there is no express authority in the Relocation Assistance Statute, the Eminent Domain Act, the regulations or the Rules of Court, counsel's application for attorney's and expert consultation fees is disallowed.

Supervisory payrolls under items 4 and 16 will be permitted in the amount of $600 per item.

Recovery will, therefore, be permitted in the amount of $105,136.12 less $25,518.25 already paid to date. Interest from May 23, 1974, the date of taking, will be awarded at the rate of 8%.

Very truly yours,

s/Theodore D. Rosenberg
Theodore D. Rosenberg

TDR:0

APPENDIX K — 42 U.S.C.A. §4622 (PUB. LAW 91-646, TITLE II, SEC. 202, 84 STAT. 1895)

Sec. 202. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for —

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a disclocation allowance of $200.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment

authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commerical enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

APPENDIX L — ORDER GRANTING EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

SUPREME COURT OF THE UNITED STATES

No. A-1041

MAX SCHULMAN, ET AL.,

Petitioners,

v.

PATERSON REDEVELOPMENT AGENCY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 10, 1979.

s/ William J. Brennan, Jr.
Associate Justice of the Supreme Court of the United States

Dated this 31

day of May, 1979.